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Lai Kong Loke & Anor v Ting See Leng

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HIGH COURT (PENANG) — SUIT NO PA-22 NCVC-31–02 OF 2016
HADHARIAH SYED ISMAIL J
10 OCTOBER 2016

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Tort — Nuisance — Private nuisance — Plaintiffs sued defendant for private nuisance — Whether fact that defendant parked his car in front of plaintiffs' gate proven — Whether defendant's parking of car in front of plaintiffs' house created dangerous situation — Whether defendant committed tort of private nuisance against plaintiffs — Whether fit and proper case to grant injunction — Whether damages proven

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This was an action for nuisance, injunction and damages brought by the plaintiffs against the defendant. The plaintiffs submitted that the defendant had always parked his vehicle in front or near the front gate of the plaintiffs' house, causing obstruction and inconvenience for them to exit and enter their vehicles into their house. The continuous conduct of the defendant thereof had also caused physical and mental distress to the plaintiffs. In support of their allegations, the plaintiffs relied upon the evidence of CCTV recording and also photograph of the alleged nuisance. The first plaintiff had also lodged police reports against the defendant on various occasions for various reasons, inter alia, for fear of his safety when the defendant scolded him and challenged him to a fight. In his defence, the defendant submitted that he had entered into an oral agreement with the plaintiffs in which, the first plaintiff had allowed him to park his vehicle opposite the plaintiffs' house. The defendant further denied that he had parked his vehicle right in front of the plaintiffs' house. He further denied that he had caused obstruction and inconvenience to the plaintiffs.

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Held, entering judgment for plaintiffs with costs of RM5,000:

(1) The defendant's defence that he had entered into oral agreement with the plaintiffs was untrue because there was no evidence adduced to prove it (see para 1).

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(2) Based on the evidence of CCTV recording and photographs, it was obvious that the defendant had always parked at a corner and opposite the plaintiffs' house. The parking at those places was illegal because it was parked on a yellow line and near a corner, an act prohibited under the Road Traffic Rules 1959 (see para 13).

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(3) From the CCTV recording, the flow of traffics along Lorong Sungai Kelian 3 in front of the plaintiffs' house was heavy. With the defendant's

vehicle parked by the roadside, the space for the plaintiffs to reverse their vehicles when exiting from their house became narrow. In the circumstances, it could not be disputed that the defendant's parking had created dangerous situation. Further, the defendant's conduct of parking his vehicle by the roadside instead of in his house compound which was a safer place was most unreasonable. In totality, for the illegal parking and the obstructions caused to the plaintiffs, the defendant had committed a tort of private nuisance against the plaintiffs (see para 13).

(4) Both plaintiffs had testified that the defendant was aggressive and not approachable. Further, based on court's observation, the defendant's demeanour in court was indeed aggressive. Taking into account the defendant's conduct and the fact that the illegal parking was still continuing, there was reasonable ground to believe that the defendant would not stop parking at the alleged spots unless he was restrained by an injunction. Further, the nuisance caused to the plaintiffs was not of a temporary nature and no amount of money could compensate the plaintiffs. In addition, it was not in the public interest for the court to condone the parking vehicle at yellow line and too near a road junction. Hence, this was a fit and proper case for the court to grant injunction (see para 17).

(5) Fear of being beaten up by the defendant and fear of possibility or getting involved in an accident were real. Those fear coupled with the continuous obstruction and inconvenience caused to the plaintiffs constituted sufficient damage. The test was one of a reasonable man. Therefore, the plaintiffs had proved their pleaded case of damage. Since the damage suffered by the plaintiffs were physical discomfort and mental stress, the court awarded a nominal damages of RM5,000. In totality, the plaintiffs had proved their case on balance of convenience (see paras 20–21).

[Bahasa Malaysia summary

Ini adalah tindakan untuk kacau ganggu, injunksi dan ganti rugi oleh plaintif terhadap defendan. Plaintif mengemukakan bahawa defendan telah sentiasa meletakkan kenderaannya di hadapan atau berdekatan pagar hadapan rumah plaintif, menyebabkan halangan dan kesulitan untuk mereka mengeluarkan dan memasuki kenderaan mereka ke dalam rumah mereka. Perlakuan yang berterusan defendan itu telah juga menyebabkan distres secara fizikal dan mental plaintif. Dalam menyokong tuduhan mereka, plaintif bergantung ke atas keterangan rakaman CCTV dan juga gambar kacau ganggu yang dikatakan. Plaintif pertama juga telah membuat laporan polis terhadap defendan beberapa kali untuk pelbagai sebab, antara lain, bimbang akan keselamatannya apabila defendan memarahinya dan mencabarnya untuk bergaduh. Dalam pembelaan, defendan mengemukakan bahawa dia telah memasuki satu perjanjian lisan dengan plaintif di mana, plaintif pertama telah membenarkan dia untuk meletakkan kenderaannya bertentangan dengan

rumah plaintif. Defendan seterusnya menafikan bahawa dia telah meletakkan kenderaannya di hadapan rumah plaintif. Dia selanjutnya menafikan bahawa dia telah menyebabkan halangan dan kesulitan kepada plaintif.

Diputuskan, memasukkan penghakiman untuk plaintif dengan kos sebanyak RM5,000:

(1) Pembelaan defendan bahawa dia telah memasuki perjanjian lisan dengan plaintif adalah tidak benar kerana tiada keterangan dikemukakan untuk membuktikannya (lihat perenggan 1).

(2) Berdasarkan keterangan rakaman CCTV dan gambar, adalah nyata bahawa defendan sentiasa meletakkan kenderaannya di simpang dan bertentangan dengan rumah plaintif. Parkir di tempat itu adalah menyalahi undang-undang kerana ia telah diletakkan atas garisan kuning dan berhampiran dengan simpang, satu tindakan yang dihalang di bawah Kaedah Trafik Jalan Raya 1959 (lihat perenggan 13).

(3) Daripada rakaman CCTV, aliran trafik sepanjang Lorong Sungai Kelian 3 di hadapan rumah plaintif adalah sesak. Dengan kenderaan defendan diletakkan di tepi jalan, ruang untuk plaintif mengundurkan kenderaan mereka apabila keluar daripada rumah mereka menjadi sempit. Dalam keadaan ini, ia tidak boleh dipertikaikan bahawa parkir defendan telah menyebabkan keadaan berbahaya. Selanjutnya, pelakuan defendan meletakkan kenderaannya di tepi jalan bukannya di kompaun rumahnya yang mana lebih selamat adalah tidak munasabah. Secara keseluruhan, meletakkan kereta secara haram dan halangan yang dialami oleh plaintif, defendan telah melakukan tort kacau ganggu peribadi terhadap plaintif (lihat perenggan 13).

(4) Kedua-dua plaintif telah memberi keterangan bahawa defendan adalah agresif dan sukar didekati. Selanjutnya, berdasarkan pemerhatian mahkamah, perilaku defendan di dalam mahkamah sememangnya agresif. Mengambil kira kelakuan defendan dan fakta bahawa parkir haram masih lagi berterusan, terdapat alasan munasabah untuk percaya bahawa defendan tidak akan berhenti meletakkan kereta di tempat yang dikatakan melainkan dia dihalang dengan satu injunksi. Seterusnya, kacau ganggu yang dialami oleh plaintif bukanlah bersifat sementara dan tiada jumlah wang boleh memampasi plaintif. Tambahan lagi, ia bukan demi kepentingan awam bagi mahkamah untuk membenarkan kenderaan diletakkan di garisan kuning dan terlalu dekat simpang jalan raya. Oleh itu, ini adalah satu kes yang layak dan sesuai bagi mahkamah untuk memberikan injunksi (lihat perenggan 17).

(5) Takut akan dipukul oleh defendan dan takut akan kemungkinan atau terlibat dalam kemalangan adalah nyata. Ketakutan itu digabungkan dengan halangan berterusan dan kesulitan yang dialami oleh plaintif

merupakan kerosakan mencukupi. Ujian adalah daripada orang yang munasabah. Maka, plaintif telah membuktikan kes kerosakan yang diplidkan oleh mereka pada imbangan kemudahan (lihat perenggan 20–21).]

Notes

For cases on private nuisance, see 12(2) *Mallal's Digest* (5th Ed, 2015) paras 2174–2180.

Cases referred to

Au Kean Hoe v Persatuan Penduduk D'villa Equestrian [2015] 4 MLJ 204, FC (not folld)
Bone and another v Seale [1975] 1 All ER 787; [1975] 1 WLR 797, CA (refd)
IJM Corporation Bhd v Harta Kumpulan Sdn Bhd [2007] 8 MLJ 591, HC (refd)
Khorasandjian v Bush [1993] QB 727, CA (refd)
Ong Koh Hou v Perbadanan Bandar & Anor [2009] 8 MLJ 616, HC (refd)
Pacific Engineering Ltd v Haji Ahmad Rice Mill Ltd [1966] 2 MLJ 142 (refd)
Palmer v Loder [1962] CLY 2233 (refd)
Sanders-clark v Grosvenor Mansions Company, Limited and G D'Allessandri [1900] 2 Ch 373; [1900] 16 TLR 428, ChD (refd)

Legislation referred to

Road Traffic Rules 1959 rr 8A, 12(1)

George Shek (George Shek & PH Teh) for the plaintiffs.
RN Rayer (R Nethaji Rayer & Co) for the defendant.

Hadhariah Syed Ismail J:

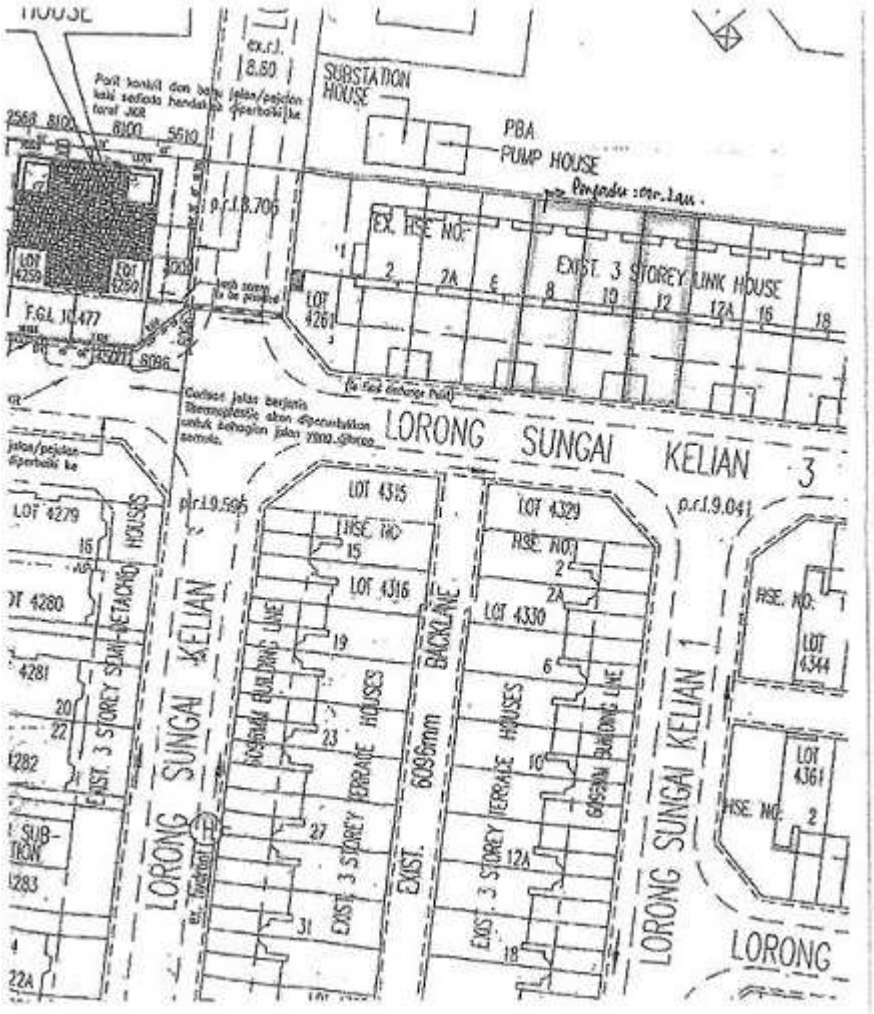
INTRODUCTION

[1] The plaintiffs are husband and wife. They stay at house No 8, Lorong Sungai Kelian 3, Tanjong Bungah, Pulau Pinang. The defendant stays at house No 12, Lorong Sungai Kelian 3, Tanjong Bungah, two doors away from the plaintiffs' house. The plaintiffs alleged the defendant had always parked his vehicle in front or near the front of the gate of the plaintiffs' house, causing obstruction and inconvenience for them to exit and enter their vehicles into their house. They also alleged that the defendant's act of continuously parking his vehicle near the plaintiffs' house despite being told not to park there had caused physical and mental distress to them. They sued the defendant for nuisance, seeking for an injunction and damages. In his defence, the defendant claims he has entered into an oral agreement with the plaintiffs, wherein the first plaintiff is said to have agreed to allow him to park his vehicle opposite the plaintiffs' house. This defence was found to be untrue because there was no

evidence adduced to prove it. He denied he had parked his vehicle right in front of the plaintiffs' house. He also denied he had caused obstruction and inconvenience to the plaintiffs. The issue arose is whether the defendant had committed an act of nuisance against the plaintiffs.

THE EVIDENCE

[2] Both plaintiffs and the defendant gave evidence. The first plaintiff ('PW1') testify as follows. He said house Nos 8 and 12 is a three storey terrace house in a row of 20 units. The road in front of their houses, Lorong Sungai Kelian 3 is a side road with a two way traffic lane. The defendant's house is facing a t-junction between Lorong Sungai Kelian 1 and Lorong Sungai Kelian 3. The location of the subject properties is shown in the sketch plan below:



[3] According to PW1, each house had a parking lot that can accommodate three vehicles. He and his wife never parked their vehicles outside their house. His first encounter with the parking problem happens sometimes in April 2014, before he moves into his house. On that day, he came to see his house and found a vehicle was parked right in front of the gate of his house. Because of that, he cannot enter his vehicle into his house. Not knowing whose vehicle it was, he left a note to the owner not to park his vehicle in front of his house. The owner of the said vehicle is the defendant. After he moved into the house in 2014, he noticed the defendant always parked his vehicle near a corner of the junction, in front of house No 10 and in front of the plaintiffs' house. When asked to explain what was the obstruction he faced with the defendant's parking, PW1 said the defendant's vehicle which is parked in front or near the front of his house gives him a hard time to get in and out of his house. He had to reverse his vehicle slowly to avoid colliding into the defendant's vehicle and move forward a few times to negotiate out of his house. If he wants to enter his house, his line of sight of incoming vehicles is obstructed by the defendant's parked vehicle.

[4] When the defendant parked his vehicle near a corner, he cannot see vehicles coming from Lorong Sungai Kelian 1 and they also cannot see his vehicle when he exit or enter his house. He said these obstructions can caused accident. Everytime there is obstruction, PW1 will approach the defendant, asking him to remove his vehicle and to park his vehicle in his house compound. At first, the defendant accede to PWTs request. But, one or two weeks later, the defendant continue parking in front of the plaintiffs' house. This time, when PW1 approached the defendant, the defendant was aggressive and asked for a fight. After that, PW1 said he did not dare to talk to the defendant. To avoid confrontation, PW1 decided to seek help from the police. So, on 6 November 2014, when the defendant parked his vehicle in front of the plaintiffs' house obstructing him to exit and enter his house, he lodged a police report. The police came and issued a parking summons to the defendant. On 12 November 2014 at about 8am when PW1 was in front of his house, the defendant shouted at him saying he was not happy with PW1 complaining to the police and that he will continue to park his vehicle anywhere he likes and that there is nothing PW1 can do. To protect his family, PW1 lodged a police report. On 18 November 2014, at about 10.45pm, the defendant's vehicle obstructed PW1's vehicle from entering his house. PW1 called the police. The police came. The defendant scolded PW1 and challenge him to a fight in front of the police. Police warned the defendant to remove his vehicle which he did. The next day, PW1 lodged a police report for fear of his safety. To stop the defendant from parking his vehicle in front of his house, PW1 took the following steps:

(a) he attached a police box to the front gate of his house;

(b) he gets the JKR to paint a yellow edge line in front of his house; and

(c) he put a rubbish bin opposite his house.

[5] But the defendant never change. He continues parking his vehicle along Sungai Kelian 3. Normally, his parking will be from 8pm till 8am in the morning or all day long. To prove the defendant's obstruction, PW1 has produced photographs ('P17') and CCTV recording ('P19'). In fact, when PW1 return from work on at about 10pm, he found the rubbish bin was knocked over by the defendant. On this issue, the defendant claimed he was not aware that he had knocked down the rubbish bin. However, the CCTV recording showed not only the defendant was aware he had knocked down the rubbish bin, but also he was not bothered to pick up the bin. Unable to tolerate the defendant's behaviour, PW1 appoint a lawyer from the legal firm of Messrs George Shek & PH Teh to issue a letter of demand dated 14 September 2015 to the defendant, demanding that the defendant restraint from parking his vehicle in front or near the plaintiffs' house. There was no reply from the defendant. Instead, on at about 7.55am, while driving his vehicle with his wife inside, PW1 saw the defendant's vehicle approaching. He stayed at the left lane, allowing the defendant's vehicle to pass. The defendant, upon passing PWTs vehicle, suddenly, without any indicator, swerved his vehicle two times in front of PWT's vehicle which PWT's find is intimidating. He lodged a police report because he suspects the defendant was angry after being issued with lawyer's demand letter. The defendant had contended that the numerous police reports lodged by PW1 contained a false statements. But, he himself never lodged a single police report to rebut or deny the plaintiffs' allegation. PW1's testimony was supported in material facts by the second plaintiff ('PW2'). PW2 is a medical doctor attached to Penang General Hospital. Primarily, her complaint is the defendant's act of parking his vehicle in front or near the front of her house had caused obstruction and inconvenience for her whenever she is requested to attend at the hospital for an emergency. Like PW1, she says she finds it hard to reverse her vehicle out of her house and it takes a while to do so. She also finds it hard to enter her vehicle into the parking lot of her house upon returning from the hospital. She supports her husband's decision to take this matter to court as the defendant was aggressive.

[6] The defendant's version is as follows. He denied he had parked his vehicle near a junction. He also denied the parking of his vehicle in front of the plaintiffs' house had caused obstruction and inconvenience to the plaintiffs. He further denied that he cannot parked his vehicle on a yellow line. He agrees he can parked two vehicles in the car parking lot of his house. But chose not to do so because he said it is difficult to park two vehicles as well as it will cramp his house. But, photograph at p 38 of Bundle B shows he had parked two vehicles in his house compound.

A NUISANCE

[7] Private nuisance is an unlawful interference and/or annoyance which cause damages to an occupier or owner of a land in respect of his enjoyment of the land; see *Ong Koh Hou v Perbadanan Bandar & Anor* [2009] 8 MLJ 616; *Pacific Engineering Ltd v Haji Ahmad Rice Mill Ltd* [1966] 2 MLJ 142. Nuisance may be with respect to property or personal physical discomfort. The discomfort should be such as an ordinary or average person in the locality and environment would not put up or tolerate. In *Sanders-clark v Grosvenor Mansions Company, Limited and G D'Allessandri* [1900] 2 Ch 373; [1900] 16 TLR 428, an injunction was granted to prevent a person from turning a floor underneath a residential fiat into a restaurant and thereby causing a nuisance by heat and smell to the occupier of the flat. In *Palmer v Loder* [1962] CLY 2233, a perpetual injunction was granted to restrain the defendant from interfering with the plaintiffs enjoyment of her flat by shouting, banging, laughing, ringing doorbells or otherwise behaving so as to cause a nuisance by noise. Whether nuisance is committed or not is a question of facts to be decided based on the circumstances of each case.

[8] The defendant submits the plaintiffs have failed to prove their case of nuisance. It is submitted that the plaintiffs' claim should only be allowed if the plaintiffs can proof that the defendant by parking his vehicle had disturbed and obstructed the plaintiffs from entering or exiting their vehicles from their house. To support his argument, learned counsel for the defendant cited the case of *Au Kean Hoe v Persatuan Penduduk D'villa Equestrian* [2015] 4 MLJ 204. In that case, the appellant and his wife owned a house in the D'Villa Equestrian estate. When they bought the property, there were already two boom gates and a guard house in operation on the road which served as the sole entrance to and exit from the housing estate. The respondent was the residents' association of the housing estate and it decided that those residents who did not pay the monthly fee for security and maintenance charges would have to open the boom gates themselves without the assistance of the security guard on duty. The appellant ,who stopped paying the security and maintenance charges after having previously done so, objected to the respondent's decision and sued the respondent for nuisance in creating an obstruction on a public road. The respondent counterclaimed for arrears of maintenance and security charges and an injunction to restrain him from harassing the committee members of the respondent and the security guards at the guard house. The High Court dismissed the appellant's claim. The court held that while the appellant might have been inconvenienced by having to open the gate himself, he had not been obstructed or prevented or hindered from entering his residence, neither did the presence of the boom gates and the guard house interfere with the comfort or convenience of living in the housing estate. The Court of Appeal affirmed the High Court's decision. On further appeal, the following question of law

was posed to the Federal Court:

> whether the erection of a guard house and boom gate across a public road in a residential area was an obstruction within the meaning of s 46(1)(a) of the Street, Drainage and Building Act 1974.

[9] In dismissing the appeal, the Federal Court held:

> [25] At common law, both actionable obstruction or actionable private nuisance is not available for inconvenience. The decided cases have shown that it is a matter of degree at all times and the conduct has to be unreasonable conduct in the circumstances of the case for it to be actionable. In *Trevett v Lee* [1955] 1 WLR 113, Lord Evershed observed that the question whether a householder is or is not obstructing the highway so as to give rise to cause of action is to be judged by balancing on standards of reasonableness, the claims and the conduct of the householder on the one side and the members of the public on the other. Lord Evershed adopted the rule propounded by Romer J in *Christchurch Corp* [1912] 3 KB 595 as follows:
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> > The law relating to the user of highways is in truth the law of give and take. Those who use them must in doing so ha ve reasonable regard to the convenience and comfort of others, and must not themselves expect a degree of convenience and comfort only obtainable by disregarding that of other people. They must expect to be obstructed occasionally. It is the price they pay for the privilege of obstructing others.
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> [26] We are of the view the underlying rule is a recognition that individuals live within a community and it is always the balancing of the individuals' inconvenience against the communities' interest that is of paramount concern. On this point in *George Philip & Ors v Subbamal & Ors* AIR 1957 Tra-Co 281, the High Court in India observed as follows:
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> > Every little discomfort or inconvenience cannot be brought on to the category of actionable nuisance. Consistent with the circumstances under which a person is living, he may have to put up with a certain amount of inevitable annoyance or inconvenience. But, if such inconvenience or annoyance exceeds all reasonable limits, then the same would amount to actionable nuisance. The question as to what would be a reasonable limit in a given case will have to be determined on a consideration as to whether there has been a material interference with the ordinary comfort and convenience of life under normal circumstances.
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> [27] It is our judgment that both the High Court and the Court of Appeal had correctly concluded that the appellant's inconvenience was not an actionable nuisance by the presence of the guard house and the boom gates.

[10] The defendant relied heavily on the judgment of the Federal Court under held pp 25–27 above. The defendant also refers this court to the case of *Pacific Engineering Ltd v Haji Ahmad Rice Mill Ltd* [1966] 2 MLJ 142, wherein the court held:

> The essence of nuisance is a condition or activity which unduly interferes with the use or enjoyment of land ... Nuisance is an act or omission which is an interference with, disturbance of or annoyance to a person in the exercise or enjoyment of (a) a right belonging to him as a member of the public, when it is a public nuisance, or (b) his ownership or occupation of land or of some easement, profit, or other right used or enjoyed in connection with land, when it is a private nuisance.
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> The acts which constitute pubiic nuisance are all of them unlawful acts. In private nuisance, on the other hand, the acts constituting the nuisance are not necessarily or usually unlawful. A private nuisance may be and usually is caused by a person doing on his own land something which he is lawfully entitled to do. His conduct only becomes a nuisance when the consequences of his acts are not confined to his own land but extend to the land of his neighbour by (1) causing an encroachment on his neighbour's land, when it closely resembles trespass; (2) causing physical damage to his neighbour's land or buildings or works or vegetation upon it; or (3) unduly interfering with his neighbour in the comfortable and convenient enjoyment of his land.

[11] It was further submitted that the CCTV recordings played in court clearly show the plaintiffs have failed to prove that the parking of the defendant's vehicle is a nuisance.

[12] In response, learned counsel for the plaintiffs submit, the photographs and CCTV clearly show the defendant had parked his vehicle too near a corner and in front of the plaintiffs' house. The road in front of the plaintiffs' house has been painted with yellow line. Rule 8A of the Road Traffic Rules 1959 states no person shall cause any vehicle to remain over yellow line. Based on r 8A, the plaintiffs submit the defendant cannot parked his vehicle on the yellow line and that his parking is illegal. It is also submitted that the defendant's parking near a corner of a road junction is against r 12(1) of the Road Traffic Rules 1959 which states no person shall allow any vehicle to remain stationary within 30 ft of a road junction or corner. Hence, the plaintiffs submit, the defendant's parking at a corner of a junction is illegal. It was further submitted that the defendant's illegal parking had obstructed the plaintiffs from entering and exiting into their house because they cannot see the oncoming vehicles from Lorong Sungai Kelian 1 every time they want to exit or enter their house. These obstructions can cause accidents. In addition to that, the defendant's parking had also caused inconvenience to the plaintiffs to enter and exit their vehicles into their house. With regard to the case of *Au Kean Hoe v Persatuan Penduduk D'villa Equestrian* [2015] 4 MLJ 204 cited by the defendant, the plaintiffs submit the facts of that case is distinguishable from the facts in the present case. In that case, the alleged nuisance (guard house and boom gate) were found to be legally erected and was for legitimate purposes. Whereas, in the present case, the defendant's vehicle was parked illegally and not for legitimate purposes. When all these facts are considered, the plaintiffs submit they have proven their case of nuisance against the defendant.

[13] After hearing submissions from both parties, this is my findings. Although the defendant had denied he had parked his vehicle in front of the plaintiffs' house, I find the defendant was not telling the truth. I accept PW1's testimony that at least twice, the defendant had parked right in front of the plaintiffs' house, preventing him from entering his house. From the photographs and CCTV recording, it is obvious to me that the defendant always parked at a corner and opposite the plaintiffs' house. The parking at those places is illegal because it is parked on a yellow line and near a corner, an act prohibited under the Road Traffic Rules 1959. From the CCTV recording, I noticed that the flow of traffics along Lorong Sungai Kelian 3 is heavy. The width of Lorong Sungai Kelian 3 only allow two vehicle to pass. With the defendant's vehicle parked by the roadside, it has taken the space of more than half of one lane, that is the lane of vehicle coming from Lorong Sungai Kelian 1. This will cause vehicle coming from Lorong Sungai Kelian 1 to enter into the opposite lane. At the same time, they cannot see oncoming vehicles from Lorong Sungai Kelian 3. If they are not careful, accident can occur. For the same reason, the space for the plaintiffs to reverse their vehicles when exiting from their house became narrow. Not only the plaintiffs had a hard time to get out, they also had to worry about vehicles coming from Lorong Sungai Kelian 1 who cannot see the plaintiffs' vehicles exiting or entering. Judicial notice can be taken that normally vehicles taking a corner do not move slowly. The corner is a blind spot. Taking into account all these factors, it could not be disputed that the defendant's parking had created a dangerous situation. The defendant had contended that so far there was no accident happens. Surely, this cannot be the right attitude. Judging from the defendant's behaviour, I doubted the defendant would parked his vehicle elsewhere even after an accident has occurred, it is my considered view that the principle that road users must practiced give and take, as mentioned by the Federal Court in *Au Kean Hoe*'s case does not apply in this case because the defendant's house has a parking lot that can accommodate three vehicles. This fact is not disputed. Parking lot is meant to park vehicle. Before this case, he had parked two vehicles in his house compound. But, now, he refused to park his second vehicle inside his house compound. He only parked one car in his house compound. He purposely parked his vehicle in front of the plaintiffs' house to cause annoyance and intimidate the plaintiffs because the plaintiffs had seeked assistance from the police and various local authorities. This case would not be necessary if the defendant had parked his vehicle in his house compound. I find the defendant's conduct of parking his vehicle by the roadside instead of in his house compound which is a safer place is most unreasonable. I agree with the plaintiffs' submission that *Au Kean Hoe*'s case does not apply here because the facts are different. For the illegal parkings and the obstructions caused to the plaintiffs, I hold the defendant has committed a tort of private nuisance against the plaintiffs.

A INJUNCTION

[14] In para 15 of the statement of claim, the plaintiffs are seeking, inter alia, for an injunction to stop the defendant from parking his vehicle near or in front of the gate of the plaintiffs' house and where there are yellow line drawn on it. The question is should an injunction be granted to the plaintiffs. In *Halsbury's Laws of England* Vol 34 at para 385, it is stated that an injunction will not be granted if:

> (1) the injury caused by the nuisance is trivial or not serious,is one which is capable of being estimated in money and can be adequately compensated by a small money payment, and
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> (2) the case is one which it would be oppressive to the defendant to grant an injunction. In such cases damages will be given in substitution for an injunction. An injunction will not be granted when the injury is of a temporary or occasional character. An injunction may be refused to a plaintiff who has suffered hardship if it is in the public interest to continue the nuisance.
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> In such cases damages will be given in substitution for an injunction. An injunction will not be granted when the injury is of a temporary or occasional character. An injunction may be refused to a plaintiff who has suffered hardship if it is in the public interest to continue the nuisance.

[15] But circumstances may arise that an injunction is an appropriate remedy. In *Halsbury's Laws of England* Vol 34 at paras 386, it is stated:

> ... an injunction will be granted to restrain the continuance of a nuisance where the injury done by it is substantial, or where, however slight the damage may be, the nuisance is a continuing or recurring one, so that it would give rise to a series of actions if no injunction were granted, or where the defendant claims the right to continue the conduct complained of, or threatens to do so. The conduct of the defendant may be a material factor in deciding whether the violation of a right should be remedied by damages or prevented by an injunction.

[16] Further down, at para 389, it is stated:

> Where an injunction is sought, it is not sufficient merely to allege that the proposed act of the defendant will have an illegal result as against the plaintiff, without putting before the court sufficient material to enable it to judge of that question for itself. Where some degree of present nuisance exists, the court will take into account its probable continuance and increase, and its presence existence raises a presumption of its continuance. As between adjoining owners the court will consider whether the defendant is using his property reasonably or not.

[17] From the above principles of law, it appears that the conduct of the defendant shall be the material factor in deciding whether to grant or not to grant an injunction. In the present case, both plaintiffs have testified that the

defendant is aggressive and not approachable. I had the opportunity to observe the defendant's demeanour in court. Indeed, the defendant is aggressive. The manner he answered questions when cross-examined by the plaintiffs' solicitors is in stark contrast with the plaintiffs. The plaintiffs are soft spoken people. Not only he has raised his voice, he also had the tendency of asking back questions to the counsel and arguing with the counsel. He had to be reprimanded by the court that his duty is only to answer question. The defendant admitted as at the day of the trial on 30 August 2016, he still parked his vehicle at the spots objected by the plaintiffs. I have heard unchallenged evidence from PW1 of the defendant's conduct in shouting at PW1 simply because PW1 had complained to the police; how the defendant had asked for a fight with PW1 right in front of the police; how the defendant threaten PW1 that he will continue parking anywhere he likes and that there is nothing anyone can do to stop him. Not even this court. Taking all these factors, I find the defendant is a trouble maker and he did what he did just to provoke and intimidate the plaintiffs. Any reasonable person in the defendant's shoes will not continue parking his vehicle at the alleged spots after being told by the property owner not to park there. What more when the defendant can park his vehicle in the parking lot of his own house. The defendant himself has admitted that the parking lot of his house can accommodate two vehicles and that he can parked his vehicles in his own compound since he only bring home two vehicles. The problem would have end there and then. Peace. But, the defendant refused to accede to the plaintiffs' request. The defendant only park one vehicle in the parking lot of his house, leaving ample empty space in his parking lot. The defendant's conduct of purposely refusing to park his vehicle in the parking lot of his compound which is meant for parking with ample space to do so is so unreasonable and cannot be accepted by the court. In choosing to park his vehicle wherever he likes, despite being told not to do so, not only the defendant had acted like he was a king in the area, but also he has created a dangerous situation to other road users in the area. Accident can happen and may happen because his parking had obstructed the right of way and view of vehicles coming from Lorong Sungai Kelian 1. Taking into account the defendant's conduct and the fact that the illegal parking still continue, there is reasonable grounds to believe that the defendant will not stop parking at the alleged spots unless he is restrained by an injunction. Further, the nuisance and hardship caused to the plaintiffs is not of a temporary nature. I agree with the plaintiffs that no amount of money can compensate the plaintiffs. Also, it is not in the public interest for this court to condone the parking of vehicle at yellow line and too near a road junction. This is a fit and proper case for the court to grant an injunction. I, therefore granted the injunction prayed for by the plaintiffs.

DAMAGES

[18] In para 12 of the statement of claim, the plaintiffs have pleaded as follows: 'oleh kerana pengacauan defendan tersebut, plaintif pertama dan

plaintif kedua telah mengalami kerugian dari segi kejejasan kesihatan mental dan fizikal'. The defendant submit there is no evidence from the plaintiffs that the defendant had caused them mental and physical stress by the parking of the defendant's vehicle at the alleged location. As such, the defendant submit that the plaintiffs have failed to prove para 12 of the statement of claim. In *Halsbury Laws of England* Vol 34, on the subject matter of damages, it is stated at para 382 that:

> ... the damages in an action for nuisance should be such as to compensate for whatever loss results to the plaintiff as a foreseeable consequence of the wrongful act ... Where the nuisance has caused personal injuries or damage to chattels, damages for those are assessed in the ordinary way.

[19] In contending the plaintiffs are entitled to damages, learned counsel for the plaintiffs relied on two cases:

(a) in *Bone and another v Seale* [1975] 1 All ER 787; [1975] 1 WLR 797. This is a case, where smells from a pig farm constituted a nuisance but did not diminish the value of the land and caused no ill health. Each plaintiff was awarded $1000 for the two years' loss of amenity in the enjoyment of the property which he had already suffered; and

(b) *IJM Corporation Bhd v Harta Kumpulan Sdn Bhd* [2007] 8 MLJ 591. This is a case where the defendant had sent incessant letters to the plaintif, demanding payment for the sum of RM2.84m and containing constant threats against the plaintiff causing annoyance was held to be sufficient proof of damage and ordered the defendant to pay damages (after assessment by the registrar) to the plaintiff. In coming to that decision, the court referred to the case of *Khorasandjian v Bush* [1993] QB 727 and quoted a statement made by Dillon LJ in that case as follows:

> Damage is, in in the relevant category, a necessary ingredient in the tort of private nuisance ... So far as the harassing telephone calls are concerned, however, the inconvenience and annoyance to the occupier caused by such calls, and the interference thereby with the ordinary and reasonable use of the property are sufficient damage.

[20] The plaintiffs submit the damage caused to the plaintiffs are emotional and mental in nature and are claimable based on *IJM Corporation Bhd v Harta Kumpulan Sdn Bhd* [2007] 8 MLJ 591 and *Bone and another v Seale* [1975] 1 All ER 787; [1975] 1 WLR 797. Both plaintiffs had said they fear the defendant. The test is one of a reasonable man. I agree with the plaintiffs that the court must ask itself the following questions. Would a reasonable man feels stressed by the conduct of the defendant in obstructing them continuously for the past two and a half years since April 2014? Would a reasonable man be worried when exiting or entering his house knowing that an accident may happen at any time as the line of sights of the road is blocked by the defendant's

vehicle? Would a reasonable man feels agitated with the fear of being beaten up if he confronts the defendant? The answer to all these question is yes. Fear of being beaten up by the defendant and fear of possibility of getting involved in an accident are real. In my view, these fear coupled with the continuous obstruction and inconvenience caused to the plaintiffs constitute sufficient damage. I, therefore hold that the plaintiffs have proved their pleaded case of damage. Since the damage suffered by the plaintiffs are physical discomfort and mental stress, I awarded a nominal damages of RM5000.

CONCLUSION

[21] Based on the evidence before the court, the plaintiffs have proved their case on the balance of probabilities. I, therefore enter a judgment for the plaintiffs as prayed for in prayer 15(a), (b) and (c) of the statement of claim with RM5000 cost.

Judgment entered for plaintiffs with costs of RM5,000.

Reported by Dzulqarnain Ab Fatar